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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,160	07/30/2003	James J. Fitzgibbon	79199	5661
22242	7590	06/07/2004	EXAMINER RO, BENTSU	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

10/630,160

FITZGIBBON ET AL.

Examiner

Bentsu Ro

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 31,34 and 37 is/are rejected.
- 7) ☒ Claim(s) 32,33,35,36,38,39 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

FIRST OFFICE ACTION ----- A FINAL REJECTION

1. Claims 31, 34, 37 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barthel et al US Patent No. 5,081,586. (This is the same reference used by the examiner for rejecting various claims in the first office action with respect to the application SN 09/804,407, mailed to applicant on June 21, 2002.)

Claims read onto Barthel et al teaching as follows:

The claims:	Barthel et al teaching:
Claim 31 (new): A movable barrier operator having a safety mechanism, comprising:	Barthel et al teach, inter alia, an operator for opening/closing a power window in a vehicle, see Fig. 1A for the entire door accessory control system, the system includes driver door modules 16, 18 and output modules 32, 44 for opening/closing power windows 48, 52, 58, 62; thus, any one of the power windows 48, 52, 58, 62 is a movable barrier and any one of the driver door modules 16, 18 is a movable barrier operator; Fig. 1A shows Fuses 8 and 10, which are a safety mechanism; Fig. 6B shows a current sensor 241 for sensing the load current; in a stalled condition, the current sensor can be used to trip the output switch to disconnect the load device, see column 9, lines 1-25; specifically, lines 23-25; thus, the current sensor 241 is another safety mechanism;

<p>an electric motor;</p> <p>a transmission connected to the motor to be driven thereby and connectable to the barrier to be moved;</p> <p>an accessory control device;</p> <p>a controller,</p> <p>responsive to a command to move the barrier, for controlling activation of the motor</p> <p>and for controlling operation of the accessory control device,</p> <p>wherein the controller automatically determines whether the accessory control device is present</p> <p>and further controls operation of the accessory control device; and</p>	<p>Fig. 1C, in the right-lower corner, it shows a window motor; Fig. 1D also shows the same window motor with connection pins WIN- and WIN+;</p> <p>not shown, however, all power windows having a transmission for connecting the motor to the window pane; the most commonly used transmission is a rack/pinion type connection;</p> <p>Fig. 1A shows a left mirror 46, which is one of the accessory control devices; Fig. 1A also shows a left front door lock 50, which is another accessory control device;</p> <p>Fig. 1A shows the driver door module 16, which is a controller;</p> <p>the module 16 is connected to the window 48 for controlling the activation of the window motor to open/close the window 48;</p> <p>the module 16 is also connected to the mirror 46 for controlling the operation of the mirror 46; as explained previously, the mirror 46 is an accessory control device;</p> <p>in Fig. 11A, the step 392 "mirror switches active" is a step for automatically determines whether the accessory control device is present;</p> <p>if the accessory control device is active (i.e. the mirror switch is active), the following step 394 sets switch active equal to mirror active, and the mirror is active for operation; Fig. 1A shows the connection of the driver door module 16 connecting to the mirror 46 for controlling the operation of the</p>
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<p>an operating routine for varying operation of the controller based on the controller detecting the presence of the accessory control device.</p>	<p>mirror 46;</p> <p>Fig. 6A includes a step 256 for set up out actuators and a step 260 for sending out a command (i.e. an energization of actuator);</p> <p>Fig. 2 shows CCD messages, the messages are handled by the CCD bus 14;</p> <p>the priority of the message handling is an operating routine;</p> <p>the execution of the control operation based on the priority is a varying operation of the controller;</p> <p>alternatively, Fig. 11A is an operating routine;</p> <p>the decision step 390 changes the operating routine of the controller based on the "YES" or "NO" decision;</p> <p>for example, if "YES" is determined, then a step 394 is executed, on the other hand, if "NO" is determined, then the step 392 directly goes to step 400.</p>
<p>Claims 34 and 37.</p>	<p>These two claims are very similar to but broader than that of claim 31, explanation is omitted.</p>

2. Claims 32, 33, 35, 36, 38, 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Why the examiner makes this action final ???

(1). Claim 31 is similar to claim 27 (Twice Amended) of the amendment in the application SN 09/804,407. The amendment was mailed to PTO on 9/20/2002 in response to the examiner's first office action, mailed on June 21, 2002. Claim 31 differs from the twice amended claim 27 by adding "an accessory control device" (claim 31, line 5). However, claim 27 also has a limitation "wherein the controller automatically determines whether an accessory control device is present" (claim 27, lines 7-8). Thus, the added phrase "an accessory control device" does not set forth a further limitation to twice amended claim 27.

Claim 31 also includes "for controlling operation of the accessory control device" (claim 31, line 7) and "further controls operation of the accessory control device" (claim 31, lines 8-8). However, the twice

amended claim 27 also has a limitation of "and further controls operation of the accessory control device" (claim 27, lines 8-9).

In view of the foregoing, claim 31 is basically similar to that of twice amended claim 27 with a different arrangement.

(2). Claim 34 is identical to the new claim 38 of the preliminary amendment in the application SN 09/804,407, mailed to PTO on 8/1/2001.

(3). Claim 37 is similar to the new claim 43 of the preliminary amendment in the application SN 09/804,407, mailed to PTO on 8/1/2001.

Claim 37 differs from claim 43 by slightly re-arranging the control function language, however, the subject matter is same.

Claims 27, 38, 43 of SN 09/804,407 have been rejected twice, one in the first office action mailed 6/21/2002 and the other in the final rejection mailed 1/24/2003. Because claims 31, 34, 37 of this instant application are either similar to or identical to that of claims 27, 38, 43 of the parent application, and because claims 27, 38, 43 of the parent application have been rejected at least once before, the rejection of claims 31, 34, 37 in this instant office action is considered a second time or a third time rejection.

Of course, a second time or a third time rejection can be made final.

5. Any inquiry concerning this communication should be directed to Bentsu Ro at telephone number 571 272-2072.

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Bentsu Ro
Senior Examiner
Art Unit 2837